

Arbitration Agreement  
Revised February 2009

MUTUAL AGREEMENT TO ARBITRATE CLAIMS

This Mutual Agreement to Arbitrate Claims (“Agreement”) is made by and between The Cheesecake Factory Incorporated, a Delaware corporation (“the Company”) and (insert Staff Member’s Name). Any reference in this Agreement to “I” or “me” or “my” shall mean the Staff Member identified above and any reference in this Agreement to the “Company” shall mean The Cheesecake Factory Incorporated, and also all of its subsidiaries and affiliated entities; all benefit plans, including without limitation any medical, dental, 401(k), deferred compensation or other benefit plan (if applicable); such benefit plans’ sponsors, fiduciaries, administrators, and affiliates; and all officers, directors, agents, heirs, executors, successors and assigns of any of them.

Agreement to Arbitrate Disputes

I recognize that differences may arise during, between, or following my employment with the Company. I understand and agree that by entering into this Agreement, I anticipate gaining the benefits of a speedy, impartial dispute-resolution procedure if I or the Company determine that the Company’s internal procedures for handling claims, including without limitation, reporting claims to my manager, Area Director, Careline and/or the Company’s staff relations department, have not resulted in a mutually acceptable resolution of the dispute. The Company and I agree to all following terms and conditions.

Claims Covered by the Agreement

The Company and I mutually consent to the resolution by arbitration of all claims arising out of my employment (or its termination) that the Company may have against me, or that I may have against the Company or against its officers, directors, employees or agents in their capacity as such or otherwise, currently existing or which may arise in the future. The claims covered by this Agreement include, but are not limited to, claims for wages or other compensation due; claims for breach of any contract or covenant (express or implied); claims arising out of my participation in the Managing Equity Program (if applicable); tort claims; claims for discrimination (including, but not limited to, race, sex, religion, national origin, age, marital status, medical condition, disability or other protected class, if any) under applicable state or federal law; claims concerning harassment, including but not limited to sexual harassment; claims for benefits (except where an employee benefit or pension plan specifies that its claims procedure shall culminate in an arbitration procedure different from this one), and claims for violation of any federal, state, or other governmental law, statute, regulation, or ordinance, except for those claims excluded in the Claims Not Covered section below. However, nothing herein shall prevent me from filing or pursuing an administrative charge of discrimination before the United States Equal Opportunity Commission or any other appropriate federal or state agency (although, if I choose to pursue a claim following the exhaustion of such administrative remedies, that claim would be subject to the provisions of this Agreement).

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Claims Not Covered

Claims I may have for workers' compensation or unemployment compensation benefits are not covered by this Agreement.

With the exception of those claims excluded in this section, arbitration shall be the exclusive method for resolving any dispute; provided, however, that either party may request injunctive and/or equitable relief from a court of competent jurisdiction.

Required Notice of All Claims and Statute of Limitations

The Company and I agree that the aggrieved party must serve a formal written demand for arbitration, containing all factual bases of any claim, to the other party within one (1) year of the date the aggrieved party first knows or should have known of the event giving rise to the claim, unless the statute of limitations applicable to any statutory claim would provide for a longer period, in which case the longer limitations period shall apply. The written demand shall identify and describe the nature of all claims asserted and the facts upon which such claims are based. If a party fails to serve a formal written demand for arbitration within the period proscribed by this section or applicable statute, as the case may be, then the claim shall be void and deemed waived.

Any demand for arbitration served on the Company must be given by written notice to The Cheesecake Factory Incorporated, 26901 Malibu Hills Road, Calabasas Hills, California 91301, Attn: General Counsel. Any demand for arbitration served on me must be given by written notice to the last address recorded for me in the Company's employee information files. The demand shall be sent to the other party by certified or registered mail, return receipt requested.

Arbitration Procedures

The Company and I agree that the arbitration and this Agreement shall be controlled by the Federal Arbitration Act (other than as expressly stated herein) and acknowledge that the Company's business and the nature of my employment affect interstate commerce. The Company and I agree that any arbitration under this Agreement shall be conducted by a neutral arbitrator who is licensed to practice law in the state in which I was employed by the Company on the date upon which the claim arose ("Arbitrator"). The arbitration shall take place within the county in which the claim arose. The Arbitrator shall be selected from a list of retired judges provided by the American Arbitration Association ("AAA") or similar dispute resolution service or as mutually agreed by the parties. If the parties cannot reach a mutual agreement on the arbitrator, the AAA shall give each party a list of arbitrators experienced in employment law. Each party may strike all names on the list it deems unacceptable. If only one common name remains on the lists of all parties, that individual shall be designated as the Arbitrator. If more than one common name remains on the lists of all parties, the parties shall strike names alternately until only one remains. The party who did not initiate the claim shall strike first. If no common name remains on the lists of all parties, the AAA shall furnish an additional list or lists until the Arbitrator is selected.

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The Arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the state in which the claim arose, or federal law, or both, as applicable to the claims asserted. The arbitration shall be conducted in accordance with the AAA employment dispute resolution rules in effect when the dispute is submitted to arbitration, or other rules mutually agreed upon in writing by the parties. The Federal Rules of Evidence shall apply. The Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation or effect of this Agreement (not including, however, any disputes concerning the validity or enforceability of this Agreement). There shall be no right or authority for any dispute to be brought, heard, or arbitrated as a class, collective, or representative basis and the Arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated. The arbitration shall be final and binding upon the parties. The Arbitrator shall have jurisdiction to hear and rule on pre-hearing disputes and is authorized to hold pre-hearing conferences by telephone or in person as the Arbitrator deems necessary. The Arbitrator shall have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure. Either party, at its expense, may arrange for and pay the cost of a court reporter to provide a stenographic record of proceedings. Either party, upon request at the close of hearing, shall be given leave to file a post-hearing brief. The time for filing such a brief shall be set by the Arbitrator. The Arbitrator shall render a written award and opinion which reveals the essential findings and conclusions upon which the award is based.

Discovery

Except as otherwise provided herein, all discovery proceedings shall be governed by the laws of the state in which I was employed by the Company on the date upon which the claim arose. Discovery shall be conducted to the extent necessary to adequately arbitrate or defend any statutory claims, including access to essential documents and witnesses, as determined by the Arbitrator. Either party may serve additional discovery upon a showing of good cause as ordered by the Arbitrator. At least 30 days before the arbitration, the parties must exchange lists of witnesses, including any expert, and copies of all exhibits intended to be used at the arbitration. Each party shall have the right to subpoena witnesses and documents for the arbitration.

Arbitration Fees and Costs

The Company shall be solely responsible for payment of the fees and costs of the Arbitrator. Each party shall pay for its own costs and attorneys' fees, if any. However, if any party prevails on a statutory claim which affords the prevailing party attorneys' fees, or if there is a written agreement providing for fees, the Arbitrator may award reasonable fees to the prevailing party.

Requirements for Modification or Revocation

This Agreement to arbitrate shall survive the termination of my employment. It can only be revoked or modified by a writing signed by me and the Chief Executive Officer of the Company which specifically states an intent to revoke or modify this Agreement.

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Sole and Entire Agreement; Construction

This Agreement is the complete agreement of the parties on the subject of arbitration of disputes. This Agreement supersedes any prior or contemporaneous oral or written understanding on the subject. No party is relying on any representations, oral or written, on the subject or the effect, enforceability or meaning of this Agreement, except as specifically set forth in this Agreement. If any provision of this Agreement is adjudged to be void or otherwise unenforceable, in whole or in part, such adjudication shall not affect the validity of the remainder of the Agreement.

Consideration

The promises by the Company and by me to arbitrate differences, rather than litigate them before courts or other bodies, in addition to the offer of employment made to me by the Company, or continued employment provide consideration for entry into this Agreement.

Employment Agreement

This Agreement is not, and shall not be construed to create, any contract of employment, express or implied. Nor does this agreement in any way alter the "at-will" status of my employment.

Voluntary Agreement

I ACKNOWLEDGE THAT I HAVE CAREFULLY READ THIS AGREEMENT, THAT I UNDERSTAND ITS TERMS, THAT ALL UNDERSTANDINGS AND AGREEMENTS BETWEEN THE COMPANY AND ME RELATING TO THE SUBJECTS COVERED IN THE AGREEMENT ARE CONTAINED IN THIS AGREEMENT, AND THAT I HAVE ENTERED INTO THIS AGREEMENT VOLUNTARILY AND NOT IN RELIANCE ON ANY PROMISES OR REPRESENTATIONS BY THE COMPANY OTHER THAN THOSE CONTAINED IN THIS AGREEMENT ITSELF.

I FURTHER ACKNOWLEDGE THAT I HAVE BEEN GIVEN THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH MY PRIVATE LEGAL COUNSEL AND HAVE AVAILED MYSELF OF THAT OPPORTUNITY TO THE EXTENT I WISH TO DO SO.

The Cheesecake Factory



Authorized Company Representative

General Counsel

Title of Representative

Date \_\_\_\_\_

STAFF MEMBER

\_\_\_\_\_  
Signature of Staff Member

\_\_\_\_\_  
Print Name of Staff Member

TMX# \_\_\_\_\_

Date \_\_\_\_\_